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No. [redacted] 921

In the

Supreme Court of the United States

OCTOBER TERM 1964

CURTIS B. DALL,

Petitioner,

v.

DREW PEARSON, *et al.*,

Respondents.

Application for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION

JAMES P. DONOVAN,
30½ Highland Park Shopping Village,
Dallas, Texas,

JOHN W. WOOD,
30½ Highland Park Shopping Village,
Dallas, Texas,

Attorneys for Petitioners.

WARLICK PRESS, INC.—2263 VALDINA STREET—DALLAS—ME 1-3130

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PETITION

PARTIES

The Petitioner in whose behalf this Petition for Writ of Certiorari is filed is Curtis B. Dall; the Respondents include Drew Pearson, Jack Anderson and the Washington Post Company.

OPINIONS BELOW

The oral opinion of Alexander Holtzoff, Judge of the United States District Court for the District of Columbia is unreported, but is set out in the Appendix hereto. (App. p. 17).

No opinion was delivered by the United States Court of Appeals for the District of Columbia Circuit.

JURISDICTION

The Judgment sought to be reviewed herein was signed and entered by the United States Court of Appeals for the District of Columbia October 21, 1964.

An Order Extending time to file Petition for Writ of Certiorari was made by the Honorable Earl Warren, Chief Justice of the United States, under date of January 21, 1965, extending Petitioner's time for filing such Petition "to and including February 19, 1965.

Jurisdiction to review this cause is conferred upon this Court by Section 1254 of Title 28 of the United States Code.

QUESTIONS PRESENTED

1. Was the lower Courts' action, determining, under Rule 56 of the Federal Rules of Civil Procedure, material issues of fact, raised in a libel action by defenses of truth and fair comment, a denial of Petitioner's right to jury trial, in violation of the 7th Amendment to the Constitution of the United States?

2. Did the lower Courts' refusal to enforce compliance with Rule 30 of the Rules of Federal Procedure, resulting in the Courts' complicity in suppression of relevant evidence, constitute a denial to Petitioner of due process guaranteed by the 5th Amendment to the Constitution of the United States?

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the United States:

Amendment VII — Civil Trials

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." (U.S.C. Amendment 7, Constitution, p. 134)

Amendment V — Due Process

"No person shall be held to answer * * *; nor be deprived of life, liberty or property, without due process of law; * * *" (U.S.C. Constitution Amendments 1-5, p. 297)

Federal Rules of Civil Procedure:

"Rule 30. Depositions Upon Oral Examination (c) The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties otherwise agree.* * *"

"(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation

waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or of the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32(d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part."

"(f) Certification and Filing by Officer; Copies; Notice of Filing. (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing. (2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. (3) The party taking the deposition shall give prompt notice of its filing to all other parties." (U.S.C. Federal Rules of Civil Procedure, Rules 1 to 11, pp. 34, 35, 36)

"Rule 56. Summary Judgment (c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." (U.S.C. Federal Rules of Civil Procedure, Rules 1 to 11, p. 56)

STATEMENT OF THE CASE

On August 10, 1962, Petitioner herein testified before the Committee on Finance, United States Senate, at hearings held on H. R. 11970, the Trade Expansion Act of 1962. (App. 20) The Senate Committee submitted its report, No. 2059, under date of September 14, 1962. The bill, as amended, became law on October 11, 1962. (P. L. 87-794, 1962)

On June 1, 1963, the Respondent, The Washington Post Company, published in its newspaper, Washington Post-Times Herald, a column entitled: "The Washington Merry-Go-Round The Reappearance of Curtis Dall By Jack Anderson". This newspaper and the column was printed, published and circulated in Washington, D. C. The column and the newspaper were also circulated in various places throughout the United States.

On October 4, 1963, Petitioner herein, Curtis B. Dall, filed a libel complaint in the United States District Court for the District of Columbia, jurisdiction being vested in said Court by the residence of Defendants and the publication of the alleged libel in the District of Columbia. The Complaint charged that the Petitioner had been libeled by the Defendants, The Washington Post Company, Drew Pearson, and Jack Anderson through the printing, publication and circulation of the above mentioned column, citing three specific claims of libel:

1. that in his testimony before the Senate Committee, the Petitioner "proceeded to launch into an anti-Semitic diatribe";

2. the statement "that the plaintiff, in advocating in a formal public session of a committee of the Congress, the defeat, rejection and non-enactment of certain specific legislation then pending in the Congress had attacked the Jews";

3. the statement, "that Dall solicited the 263 organizations with a kind of blank check, asking them to authorize the Liberty Lobby 'to present testimony in opposition to the trade-expansion plans of the President' meaning thereby that the plaintiff had by deceit and misrepresentation obtained authority from said organizations to represent them in advocating before a committee of the Congress, the defeat, rejection and non-enactment of certain specific legislation then pending in the Congress".

These statements and implications were alleged to have been made by the Defendants, falsely and maliciously, composed and written by the Defendants Pearson and Anderson and published and circulated throughout the District of Columbia and the United States. (JA — ii, 1-4) The Complaint alleged and prayed for actual and punitive damages totaling $4,400,000, and asked for jury trial of all claims. (id., 5)

On November 29, 1963 The Washington Post Company filed an answer admitting publication and circulation of the alleged libelous column, but denied that it was libelous.

Pearson and Anderson, Defendants, never filed an answer to Petitioner's Complaint, but on November 25, 1963, filed

a Motion for Summary Judgment, supported by an affidavit of Defendant Jack Anderson. (JA—11, Exhibit "A") The Washington Post Company, on December 7, 1963, also filed a Motion for Summary Judgment. (JA—ii) On December 16, 1963 Petitioner filed, in response to the Motions of Defendant-Respondents for Summary Judgment, a short affidavit as to his income, and a copy of a book entitled, "What Price Israel" by Alfred M. Lilienthal.

The Motions for Summary Judgment, made by Respondents were predicated upon the grounds that the published column was (1) fair, accurate and true; (2) an honest expression of opinion; and (3) fair comment and criticism on a matter of public interest.

On November 6th and 7th, 1963, Defendants-Respondent took Petitioner's deposition; the transcript consisted of 401 pages but Defendants refused to file it as required by Rule 30, because it was of "no service" to them. (Official Transcripts of Arguments on Motion, December 6, 1963, pp. 13-14) On Petitioner's Motion, opposed by Respondents, the Motions Judge ordered the Deposition transcribed and filed. Respondents also took the depositions of one John W. Wood and Willis A. Carto. The Docket Entries in the Trial Court show that but one deposition, that of John W. Wood was ever filed before Judgment. Respondents claim that Petitioner's Deposition was filed on December 16, 1963, and admit that the Exhibits pertaining thereto were not filed until January 21, 1964, 33 days after the Judge gave his oral opinion, and four weeks after he entered his Judgment granting Defendants' Motions for Summary Judgment. (Brief for Appellees—p. 8, Note 3) (JA—ii)

Oral argument of the Motions for Summary Judgment was had on December 19, 1963, Judge Holtzoff's oral opinion rendered on December 19, 1963 and Judgment entered, granting Defendants' Motions on December 24, 1963. (JA—18, 19, 20)

Petitioner perfected his appeal to the United States Court of Appeals for the District of Columbia, which affirmed the action of the trial court by Judgment entered October 19, 1964. (App. p. 19)

ARGUMENT

Under Rule 19 of the Rules of this Court, the Writ prayed for by this Court should be granted for the following reasons:

1. The decision of the Court of Appeals in this case, affirming the action of the trial court is contrary to all the principles of law established by the Courts of Appeals throughout the United States including the Circuit for the District of Columbia.

2. The denial of a jury trial on issues raised in a libel suit predicated upon the common law is in violation of the provisions of the 7th Amendment to the Constitution of the United States, and raises a constitutional question which has not been authoritatively passed upon by this Court.

3. The action of the trial court and the Court of Appeals in violation of the Federal Rules of Civil Procedure was prejudicial to the civil rights of the Petitioner, and if the precedent is permitted to stand can

only result in the chaos which results from personal jurisprudence and the administration of justice according to Judge's personal opinions rather than in accordance with evidence produced and dealt with as provided by rules of law. The expense of appeal from such illegal action can result in widespread injustice, occasioned by illegal judicial action.

In the instant case, Petitioner pleaded a common law cause of action for libel. That cause of action included three claims: (1) that he had been falsely and maliciously accused of launching into an "anti-semitic diatribe" in his testimony before the Committee; Under the rule of the weight of authority, such an action was libelous per se; (2) that he had been falsely and maliciously accused of having "attacked the Jews" in his testimony; a charge of libel which if true was also libelous per se; (3) that by implication Petitioner, by fraud and deceit, had been maliciously and falsely accused of obtaining authority to speak for certain organizations, which implication if false would also constitute libel per se.

The Respondents admitted the publication and circulation of the alleged libelous material but moved for summary judgment on the basis that: (1) the statement was true; (2) that it was an honest expression of opinion; and (3) that it constituted fair comment and criticism, on a matter of public interest.

It is to be noted that from a legal standpoint the defense pleas included an absolute defense — truth, and two conditional defenses in the nature of qualified privilege.

It has long been held that the truth of matters alleged to be defamatory, the question of substantial truth, the questions of malice and good faith, and the questions of fair comment upon matters of public interest are questions for the jury. *Curtis Publishing Company v. Fraser*, (Fla.) 209 Fed. 2d 1; *Tedder v. Merchants & Manufacturing Insurance Co. of New York* (S.C.) 251 Fed. 2d 250. The rule supported by the weight of authority appears to be that if reasonable men might differ on the facts a jury question is raised. *Herman v. Labor Co-Operative of Editors and Publishers*, (N.Y.) *Chaplin v. National Broadcasting Company*, 15 FRD 134; *Gearhart v. WSAZ Inc.*, 150 Fed. Supp. 98, aff. 254 Fed. 2nd 542 (Ky.)

In *Levane v. Willingham* (S.C.) the rule was well stated to be that a non-suit may be granted or a verdict directed when the evidence established a defense to the action, but that such action could be taken only when the evidence for the defense was open to no reasonable inference than the truth of the essential elements of such defense. 83 F. Supp. 918.

In *Glass v. Ickes*, 117 Fed. 2d 273, Cert. den. 311 U.S. 718, it was held that the privilege from civil liability for alleged libel is conditional only and that allegations of improper motives in publishing the libel are alone sufficient to bring the alleged wrongdoer into Court to have a jury pass on the charges.

As to meaning of the language involved this Court held in *Washington Post v. Chaloner*, 250 U.S. 290, that where there

was any ambiguity involved, the determination of the meaning was for the jury.

The Trial Court in its opinion (JA—18, 19) demonstrated its repudiation of recognized principles of law, and this opinion was affirmed by the Court of Appeals. The District Judge wrote:

> "The plaintiff claims that the summary and the comments on the testimony are so distorted and inaccurate so as to constitute libelous statements."

A review of the Complaint shows this statement to be contrary to fact, since Plaintiff's allegations were directed to three specific statements. (JA — 1-4)

He then wrote:

> "The Court disagrees and has reached the conclusion, on the basis of a comparison of the testimony and the article, as well as the oral and written arguments of counsel, that the account given of the testimony in the newspaper column is *substantially true* and that the comments made by the writer of the column are, as a matter of law, within the scope of fair comment."

It is to be noted that oral and written argument of counsel are not evidence; that the Court's statement indicates a conflict of evidence as to substantial truth and fair comment, which under the authorities cited are questions for the jury.

The Court then cited for his authority on this ruling the case of *Sullivan v. Meyer*, 78 App. D.C. 367 holding, in the Judge's opinion, that these matters may be disposed of as

questions of law by the Court "if the showing of the truth is clear and if the characterizations are obviously fair comment." This case was relied upon by Respondents in their brief to support the rule: It is well settled in this jurisdiction that where the facts are accurately stated in reporting matters of public interest, in the absence of actual malice, fair comment is a complete defense to an action for libel." (Appellees Brief p. 12) The Court ignored the facts that the testimony commented upon had been given by the Petitioner on August 10, 1962; that the Senate Committee made its report on September 14, 1962, that the bill was passed October 11, 1962; and that the article was published on June 1, 1963. The question as to whether the material discussed was of public interest, eight months after it happened was one for the jury. Both on this question and the question of malice the Court ignored the preface to the article conceived apparently to crawl within the defense of "public interest" which read:

> "Senators have been taking a sharper look at the spokesmen who testify on Capitol Hill for special interests — including the former son-in-law of the late Franklin D. Roosevelt."

According to the record the only possible concern of "public interest" would be the "sharper look" the Senators were taking at the spokesmen for special interests. There is no evidence in the record to support this statement which could have been possible justification for the comment made. Clearly neither the Senate nor the public had any interest

in the testimony of Petitioner given on August 10, 1962, almost eight months before the libelous attack.

The Court also recognizes in its opinion the claim that Zionists and the words "Zionist political planners" are synonymous with the words Semitic and Jews. The record evidences the claim that Zionism is a political organization concerned only with the establishment of the State of Israel. The Petitioner's testimony and the book "What Price Israel" recognize the distinction between Zionists and Jews, Zionism and Judaism and Semitic and Zionist, as well as the difference between race, politics and religion. Here again the Court determined a disputed question of fact, which was solely within the province of the jury, and failed wholly to apply the presumptions favoring the Petitioner under Rule 56 of the Federal Rules of Procedure. It is noted that in the testimony supposedly commented on, the words, "Jew", "Semite" and "Semitic" were never once used.

The Court also took it upon itself to determine whether the charge that a man had been libeled by the statement that he "proceeded to launch into an anti-Semitic diatribe" was defamatory. His own statement: "A diatribe is not a word of art, it is merely a popular characterization of an emphatic, intemperate, critical statement." demonstrates libel per se. Whether this statement was defamatory was a question for the jury.

Finally the Court decided the question of libel by implication, which can never be determined except by jury.

Apart from the Trial Court's usurpation of jury power in dismissal of Petitioner's action, the Court wholly failed to grant Petitioner the protection guaranteed by law. Notably he failed to compel compliance with Rule 30 of the Rules of Federal Civil Procedure relative to filing of depositions; further he predicated his decision upon depositions and exhibits which according to the Clerk's docket entries have never been filed. Finally he rendered his decision as to truth, fair comment and malice on affidavits of Defendants in the action or their representatives, which is hardly the basis for decision of controverted matters. His decision, from a legal standpoint, would be comparable to dismissal of a criminal charge because the Defendant said he didn't commit the crime.

The action of the trial court in this case, affirmed by the Court of Appeals, is typical of the growing tendency of the lower federal courts to abuse the Summary Judgment Rule and rid themselves of time consuming jury trials guaranteed by the 7th Amendment to the United States Constitution. Such abuse must be stopped by this Court, once and for all; the average litigant, because of the high cost of appellate litigation is powerless to prevent the abuse or to protect himself against it.

Petitioner prays that this Court grant a Writ of Certiorari to Review the action of the Court of Appeals in this cause, and that upon final hearing the Judgments of the Court of

Appeals and the District Court be reversed, and the cause remanded for jury trial in accordance with law.

Respectfully submitted,

JAMES P. DONOVAN

JOHN W. WOOD

DONOVAN & WOOD,
30½ Highland Park Shopping Village,
Dallas, Texas,

Attorneys for Petitioners.

CERTIFICATE OF SERVICE

I, John W. Wood, do hereby certify that I have caused a copy of the Petition for Writ of Certiorari in the cause, *Curtis B. Dall v. Drew Pearson, et al.*, in the Supreme Court of the United States, be placed in the hands of the Attorneys for all Parties of Record, on or before February 19, 1965, which is the due date of this brief.

JOHN W. WOOD

APPENDIX

ORAL OPINION OF THE COURT

Washington, D. C.
December 19, 1963

THE COURT: The defendants in an action for libel move for summary judgment, claiming that the alleged defamatory statement is true and also constitutes fair comment.

The alleged defamatory statements are contained in an article written by the individual defendants, who are popularly known as columnists, and published in the Washington Post. The article purports to summarize and refer to testimony that had been given by the plaintiff before a Congressional Committee. *The plaintiff claims that the summary and the comments on the testimony are so distorted and inaccurate so as to constitute libelous statements.* The Court disagrees and has reached the conclusion, on the basis of a comparison of the testimony and the article, as well as the oral and written arguments of counsel, *that the account given of the testimony in the newspaper column is substantially true and that the comments made by the writer of the column are, as a matter of law, within the scope of fair comment.*

As was indicated in an opinion by Judge Edgerton in Sullivan v. Meyer, 78 App. D. C. 367, these matters may be disposed of as questions of law by the Court if the showing of the truth is clear and if the characterizations are obviously fair comment.

It is stated in the article that the plaintiff proceeded into an anti-Semitic diatribe and attacked the Jews. It is claimed in his behalf that his testimony was not anti-Semitic and not an attack on the Jews. Of course, he had a perfect right to criticize any group in the community, any religious or racial group, that is a part of his rights under the First Amendment, and if he criticized or attacked any group he has no just cause for complaint if somebody said that he did. It is claimed in his behalf that the testimony cannot be reasonably construed as being either anti-Semitic or as an

attack on the Jews because he attacked political Zionist planners for absolute rule via a one-world government, without using the word "Jews", and also that he did not attack all Jews but only those who were Zionists and such non-Jews as were also Zionists, if there were such. The Court disagrees. An attack on a group does not necessarily mean that it has to be an attack on every single individual member of the group. It may well be an attack on a considerable proportion of that group.

Objection is also made that the word "diatribe" is used in the article. The Court is of the opinion that is within the scope of fair comment. A diatribe is not a word of art, it is merely a popular characterization of an emphatic, intemperate, critical statement.

It is also objected that the article erroneously stated that the plaintiff claimed to have appeared for 263 groups of loyal Americans but that these groups did not know what he was going to state. The accuracy of this statement, however, is established by his own deposition, which was taken at the behest of the defendants.

The Court reaches the conclusion, therefore, that the plaintiff has not been libeled, and therefore the motions for summary judgment made by the defendants are granted.

You may submit an order, gentlemen.

ORDER

This cause came on to be heard this term of court upon defendants' motions for summary judgment, together with all the pleadings, admissions, depositions, affidavits, documents and points and authorities in support thereof, and points and authorities in opposition thereto, and after oral argument by counsel for the respective parties, and upon consideration thereof, it is by the Court this 24th day of December, 1963

ORDERED that the motions for summary judgment filed herein be and the same are hereby granted.

/s/ Alexander Holtzoff
Judge

[Certificate of Service]

United States Court of Appeals
for the District of Columbia Circuit
FILED Oct. 22, 1964
/s/ Nathan J. Paulson
Clerk

No. 18,414

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

September Term, 1964.

Civil 2457-63

CURTIS B. DALL,

Appellant,

v.

DREW PEARSON, et al.,

Appellees.

Appeal from the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Senior Circuit Judge, and Burger and Wright, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment ..... of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Curiam

Dated: OCT 22 1964

STATEMENT OF CURTIS DALL, Chairman BOARD OF POLICY, LIBERTY LOBBY, Washington, D.C. Given before the Senate Finance Committee on August 10, 1962, in opposition to H.R. 11970

My name is Curtis Dall. I have the honor to be the Chairman of the Boa.d of Policy of the LIBERTY LOBBY, 918 East Capitol Street, Washington, D. C. My home is in Chestnut Hill, Pennsylvania.

The LIBERTY LOBBY has today approximately 25,000 supporters residing in ever State of the Union and has a circle of influence exceeding 75,000 citizens. LIBERTY LOBBY represents the broad interest of the Soveriegn States and the Constitutional rights of the Sovereign Citizens. We do not represent any special interest group. We have come into being to aid the general welfare of this Country. We are not financed by big business an dhave nothing but the Country's best interests at heart.

In addition today we are privileged to represent at this Hearing by special authorization 253 groups and civic organizations located throughout the United States, having a combined membership of approximately 1,500,000 members. Time does not permit us to read the name of each of these groups; therefore we have compiled a list showing their addresses, their officers, and the number of members and affiliates each represents, which is set forth in our Appendix "A," herewith attached. Among the organizations we represent today are included church groups, chambers of commerce, county committees of both Republican and Democratic Parties, civic-action groups, labor unions, etc. Therefore, we represent with pertinent supporting data an important and alert segment of the American voting public listed in Appendix "A." Verbal statements will follow our completion of this formal written statement which will pin-point our opposition to H.R. 11970.

Our combined opposition to H.R. 11970 stems primarily from our strong belief that the bill is flagrantly unconstitutional! Most informed persons know that the Constitution

specifically delegates to Congress the power to control tariffs. The House of Representatives for reasons not clear has already passed this misnamed trade bill, which gives to President Kennedy unwarranted power to raise and to lower our tariffs, in effect, life and death power over our economy, and we can detect just what forces deemed this attempted evil grab for power. The Negotiation Title would grant to the President additional powers, which he does not now have under existing "Emergency" defined law. It would vest him with the power to raise and lower tariffs in some cases even to zero, and in other cases, he can make substantial adjustments downward in the hope that this country can obtain some alleged reciprocal advantages.

Aside from the false claims of some economic advantages, the proponents of this bill claim will accrue, the Constitution simply cannot be bypassed in this manner. If you gentlemen, who are sworn to uphold the Constitution, should elect to improperly delegate your powers, which is now expressly forbidden under the Constitution, then you should take the proper steps to submit such a professed delegation of powers to the People for their consideration in the form of a constitutional amendment.

As members of Congress you have no legal right whatsoever to bypass or to rewrite the Constitution under the false guise of a so-called "trade bill." Next year, will you attempt to nullify other stated provisions of the Constitution to appease certain "shadowy" power groups? Are you willing to relegate your constitutional powers and rights simply because the ill-advised President feels he needs more power to promote what he or some of his ghost writers deem the "public interest"? This is make-believe on his part.

If the President should also request you for the power in the name of "public interest" to coin money, declare war, etc., will you also acquiesce? In other words, gentlemen, where could such nonsense stop? We, before you today, part owners of "the business," say that such nonsense stops here today, August 10, 1962.

In this bill you are directly nullifying Article I, Section 8, paragraph 2 of the Constitution, which expressly states, Congress shall have power "To regulate commerce with foreign nations, and among the several States and with the Indian tribes." What could be more clearly stated than that?

The framers of the Constitution delegated the power of economic sovereignty to Congress alone, knowing that attempted Executive encroachment in this field would be most disastrous. Now, twenty-eight years after the passage of the first "temporary" Reciprocal Trade Act, we are witnessing a further violation of a sound constitutional principle, the continued desire by one Chief Executive for the power so as to use the Trade Expansion Act as a means of placing the economy of the United States under his tight control in Washington, so that this nation can thus be integrated into an "Atlantic Partnership" with European nations.

" 'Heads,' we can't win; 'tails,' we lose.

"There occasionally is a time when plain talk is in order and the 'underbrush' cleared and removed. This occasion is one for frankness.

"You, our Senators, are the high-level elected officers of this 'business.' We represent many of the actual owners of it, and so we are not here, 'hat in hand.' The issue before us is a very grave one. We say emphatically 'No' to the desired steps here sought by our Chief Executive, and brand same as tantamount to political grand larcency in respect to personalizing Executive power, at the expense of Congress and the integrity of our Constitution.

"It is apparent that this project is actually aimed to enrich a few and to create turmoil and unemployment in many of our key industries, and it has been dreamed up and is being pushed by President Kennedy's political bosses and mentors, men who run the Council of Foreign Relations and the Business Advisory Council.

"However, in this case, the real center and heart of this international cabal shows its hand; namely the Political

Zionist Planners for Absolute Rule, via One World-Government.

"This is the basic group that created and financed what is called communism, which bores upward on organized Christian society from the bottom. This is the basic group that created and initially financed the Council on Foreign Relations and the Business Advisory Council, which through fronts and with the aid of many witting and unwitting stooges, operates quietly from the top down on our organized Christian society and our constitutional Republic.

"The Political Zionist Planners for Absolute Rule via One World-Government have a countersign. It is power, and make-believe. They state that their administrators shall be chosen from among the public with strict regard for servile obedience and will not be persons trained in the arts of government, and will, therefore, become easy pawns in their game.

"Hence, one wonders if President Kennedy has somehow become a working 'pawn' in their game. The Political Zionist Planners for Absolute Rule via One World-Government state that, through their controlled press (here and in most other countries), they have gained the power to influence, while remaining themselves in the shade, and thanks to the press, they have got the gold in their hands — notwithstanding that they have had to gather it out of oceans of blood and tears.

"We call to your attention, H.R. 11970, that if our tariffs can be lowered in a certain area or in a certain industry, or if raised, that hundreds of millions of dollars can be duly made for a few wealthy 'insiders,' with access to advance information, in this respect.

"Lower the tariff, sell stocks. Raise the tariff, buy them, before the news is out.

"For most Americans, however, chaos, unemployment, and insecurity will result.

"In effect, President Kennedy would be able to toy with the lifeblood of our economy as if it were a monkey-on-a-stick game — run it up and run it down at will.

"It is not necessary to repeat here the expression, 'Americans, wake up!' Most Americans, at long last have. Hence, Senators, full realization and full retaliation is now the order of the day instead.

"Full retalitation against these unfriendly forces and individuals who seek to tear down and negate the Constitution of this, our country. Reprisals in a legal way, if possible, but in any event effective reprisals.

"On behalf of these 263 groups of loyal Americans, now appearing against H.R. 11970, I would be glad to endeavor to answer any question in respect to any part of the foregoing, which is respectfully but most earnestly presented to you, for your favorable decisions and your favorable action."[1]

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[1] Hearings on the Trade Expansion Act of 1962 before the Committee on Finance, United States Senate, 87th Cong., 2d Sess., pt. 3, at 1513-1514 (1962). See JA 7-9.

The above quoted portion of Mr. Dall's testimony was subsequently disavowed and repudiated by Liberty Lobby in a letter from its General Counsel, John W. Wood, to the Senate Finance Committee. Thus he said (Affidavit of Senator Anderson) (JA 17-G):

> " 'All testimony delivered by Mr. Dall in excess of the attached, printed statement, prepared by the LIBERTY LOBBY, was definitely *unauthorized* and is hereby *disapproved* by the LIBERTY LOBBY. Our only remarks regarding H.R. 11970 are contained on the attached two pages, and the additional testimony given by Mr. Dall reflected his own personal opinions and in no way represented the policy or belief of this organization.' "

Mr. Wood confirmed the existence of this letter on his deposition, stating (Wood Tr. 43):

> "I remember that we did write a letter to the committee and it had something to do with Mr. Dall's testimony at the end of the letter. I don't know whether we completely disavowed all responsibility or claim or anything else for his portion that he had substantially written. But it was something to that effect."

Exhibit No. 5

THE REAPPEARANCE OF CURTIS DALL

THE WASHINGTON POST

Saturday, June 1, 1963

By Jack Anderson

Senators have been taking a sharper look at the spokesmen who testify on Capitol Hill for special interests — including the former son-in-law of the late President Franklin D. Roosevelt.

It's been a long time since Curtis Dall was in Washington as the tall, handsome husband of Anna Roosevelt, and father of "Sistie and Buzzie," the first Roosevelt grandchildren. But he turned up the other day to testify before the Senate Finance Committee against President Kennedy's trade policies

Dall claimed to represent the right-wing Liberty Lobby, then added modestly:

"Today we are also privileged to represent at this hearing, by special authorization, 263 groups and civic organizations located throughout the United States, having a combined membership of approximately 1,500,000."

He submitted a list of his alleged sponsors, which included such curious groups as the Pro-Blue Bookshop of Torrance, Calif. (25 members); Cardinal Mindszenty Study Group of East Alton, Ill. (6 members); Lamp Lighters of St. Paul, Minn. (15 members).

But he also claimed to represent several large political, civic and women's organizations.

With this formidable backing, Dall proceeded to launch into an anti-Semitic diatribe. He charged that Kennedy's trade policies were dreamed up by his "political bosses and mentors," whom he identified ominously as "the political Zionist planners for absolute rule, via one world government."

"This is the basic group," he said, "that created and financed what is called communism, which bores upward on organized Christian society from the bottom."

As he continued his tortured testimony, Dall kept reminding the Committee that he spoke for "263 groups of loyal Americans."

"The political Zionist planners for absolute rule via one world government," he cried, "have gained the power to influence, while remaining themselves in the shade, and thanks to the press, they have got the gold in their hands — notwithstanding that they have had to gather it out of oceans of blood and tears."

Sen. Carl Curtis (R.-Neb.), who presided over the hearing, listened without comment to the wierd testimony. After Dall finally ran out of oratorical gas, Curtis courteously dismissed him.

"We thank you," he said, "for your appearance here."

Senators have now learned that Dall solicited the 263 organizations with a kind of blank check, asking them to authorize the Liberty Lobby "to present testimony in opposition to the trade-expansion plans of the President." The organizations signing up had no idea that Dall would use their names to attack the Jews.

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

CURTIS B. DALL,

Petitioner,

v.

DREW PEARSON, et al.,

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERA[illegible] of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 19th, 1965.

/s/ EARL WARREN

Chief Justice of the United States.

Dated this 21st
day of January, 1965.